

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW JERSEY

IN RE: . Case No. 22-19361-MBK  
BLOCKFI INC., et al., . (Jointly Administered)  
Debtors. .  
. . . . . November 6, 2023  
. . . . . 10:02 a.m.

TRANSCRIPT OF MOTIONS HEARING  
BEFORE THE HONORABLE MICHAEL B. KAPLAN  
UNITED STATES BANKRUPTCY COURT CHIEF JUDGE

APPEARANCES VIA ZOOM VIDEOCONFERENCE:

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1 (Proceedings commenced at 10:02 a.m.)

2 THE COURT: Okay. Good morning everyone. This is  
3 Judge Kaplan, and I'm going to start my calendar momentarily.  
4 We have a number of BlockFi Inc. matters on for today. All  
5 parties and counsel are appearing remotely. I have no one in  
6 the courtroom. We are joined by at least two self-represented  
7 parties who I will hear when I call their matters, as well.  
8 And for those, as a reminder, who wish to be heard who I  
9 haven't called, please use the "raise hand" function.

10 All right. So let me start with appearances on  
11 behalf of I guess both the plan administrator and the debtor  
12 who initially filed these motions.

13 MR. AULET: Good morning, Your Honor.

14 This is Kenneth Aulet of Brown Rudnick, general  
15 counsel for the plan administrator. I'm joined by our local  
16 counsel, Genova Burns. Dan Stolz and Don Clarke I believe are  
17 both on the line. And we are also joined by our co-counsel  
18 from Haynes and Boone.

19 THE COURT: Good morning everyone.

20 All right. I have the agenda. How does counsel wish  
21 to proceed with what matters?

22 MR. AULET: So, Your Honor, we thought we'd start  
23 with a short status update on the sealing motions. From there,  
24 we'll move -- we'd propose that we'd move on to the claims  
25 objections which are essentially the main event of the hearing.

1 THE COURT: That's fine.

2 MR. AULET: To give Your Honor just a little bit of  
3 background, as you know, the plan went effective on October  
4 24th and Brown Rudnick and Haynes and Boone have both been  
5 retained as counsel of the plan administrator, and that's the  
6 role that we are both appearing in today.

7 The plan administrator has succeeded to both the role  
8 of the Committee and of the debtors in respect of these plan --  
9 claims objections. The plan administrator's focus is now on  
10 preparing for distributions, and a large part of that is  
11 cleaning up the claims register.

12 So moving to the sealing motions, based on Your  
13 Honor's ruling, we will be getting -- all parties will be  
14 getting -- both the debtors, the Committee will be getting  
15 unredacted versions of the appropriate affidavits of filings on  
16 file. There's just a lot of paper. We haven't been able to  
17 get that on file yet. But our view is that as soon as we get  
18 those on file, those objections will be mooted.

19 And unless Your Honor has any questions on that, we  
20 also informed the U.S. Trustee of that, and they have no  
21 objection to proceeding as a status conference on these issues.

22 THE COURT: All right. So what's your intention?  
23 That we just carry the sealing motions or just do an -- I can  
24 mark them order to be entered?

25 MR. AULET: Our view is that we would carry the

1 motions and then as soon as we file the unredacted versions,  
2 those would be withdrawn as moot. I believe there's one where  
3 Genova Burns has asked to seal the monthly fee statement that  
4 involves certain personal information of members of the  
5 Official Committee of Unsecured Creditors. We certainly want  
6 that carried, and we'd seek to have that entered.

7 But given the number of sealing motions that are on  
8 file where we wanted to carry it to moot it out, we figured  
9 that we would just carry all of those motions to a later  
10 hearing.

11 THE COURT: All right. Do we have a date? I know we  
12 have a January date. Is that the date we're looking at?

13 MR. AULET: I believe that we were trying to set up  
14 some additional omnibus objections or omnibus hearing dates.  
15 We thought one was the 28th of November, but that's from  
16 memory, unfortunately. So that may not be accurate.

17 UNIDENTIFIED SPEAKER: That is correct, Your Honor.

18 THE COURT: All right. Okay. So do you want to  
19 carry these sealing motions to the 28th for now, and then we  
20 set up more dates or how do you wish to --

21 MR. AULET: Yes, Your Honor.

22 THE COURT: Why don't we do that. Tuesday, November  
23 28th. I'm just looking over at my clerk.

24 Becca, does that make sense?

25 THE CLERK: Sure, yeah.

1 THE COURT: All right. Then, we'll do 11/28 at 10  
2 a.m. And we'll mark off all the pending sealing motions.  
3 We'll carry it to that date.

4 MR. AULET: Thank you, Your Honor.

5 THE COURT: You're welcome.

6 MR. AULET: Now on the claims objection matters,  
7 Lauren Sisson from Haynes and Boone will be handling the  
8 objections where there was no response as well as I believe  
9 Mr. Cotrim's. I will then handle Mr. Wynns' response as well  
10 as his corresponding motion. And Mr. Kanowitz will handle the  
11 Lymn claim objection, if that works for Your Honor.

12 THE COURT: That's fine. Let's proceed.

13 Ms. Sisson?

14 MS. SISSON: Good morning, Your Honor.

15 Lauren Sisson, Haynes and Boone, for the plan  
16 administrator. I'm going to be addressing the tenth and  
17 eleventh omnibus objections to claims generally. Those are at  
18 Docket Numbers 1437 and 1450. As an initial matter, we're  
19 going to be submitting revised proposed orders on both omnibus  
20 ten and omnibus eleven.

21 The proposed order for omnibus ten is going to be  
22 revised to reflect that some claimants have withdrawn their  
23 proof of claims entirely through the Kroll website. And so  
24 we'll be removing the proposed modifications and expungements  
25 of those claims.

1 THE COURT: Just for ease for my court recorder,  
2 we're talking about number nine on the agenda? Is it eight and  
3 nine on the agenda?

4 MS. SISSON: I believe so, Your Honor, yes. Number  
5 -- omnibus ten is Docket 1437 and 11 is 1450.

6 THE COURT: All right. Kiya, I'll give you the  
7 calendar marked up afterwards.

8 MS. MARTIN: Okay, thank you.

9 THE COURT: All right. Please proceed. Thank you.

10 MS. SISSON: And then for the proposed order for  
11 omnibus eleven, we had some errors with the surviving claim  
12 numbers on about 20 of the claims, and we also had the same  
13 situation where a dozen or so claimants withdrew their claims  
14 formally with Kroll.

15 And so out of an abundance of caution, we're going to  
16 move those creditors where there was an issue with the  
17 surviving claim numbers to the next omnibus objection just to  
18 ensure that they get notice of exactly what's happening with  
19 their claims. So we will submit those orders after the  
20 hearing.

21 THE COURT: And that is under the eleventh? Under  
22 which omnibus or both?

23 MS. SISSON: Just eleven.

24 THE COURT: Just eleven. So eleven --

25 MS. SISSON: Yes.

1 THE COURT: -- apart from what we resolve today or  
2 what has been resolved, eleven will continue with respect to  
3 certain claims?

4 MS. SISSON: That's correct, yeah. We were planning  
5 on just placing those on through omnibus entirely just to kind  
6 of clean up the calendar a little bit. And we can mark exactly  
7 what's being removed when we send the order to the Court.

8 THE COURT: All right. So we'll mark that 11/28 at  
9 10 a.m. All right. Thank you.

10 MS. SISSON: And then to turn briefly to a few of the  
11 responses that were filed to omnibus eleven, there were three  
12 responses that were filed at Docket Numbers 1647, 1648, and  
13 1650. We filed one reply to those at Docket 1830. And as we  
14 detail in that reply, it's our understanding that those  
15 responses were filed mostly to say that they agree with the  
16 treatment of their claims or just kind of as a placeholder  
17 because counsel had been retained late in the process.

18 So we have reached out to and spoken with counsel for  
19 those various responses, and it's our understanding that they  
20 don't oppose the treatment of their claims. Counsel for the  
21 creditor who filed the response at Docket 1650 asked me to  
22 inform the court that he did withdraw his response this  
23 morning.

24 THE COURT: All right. Do you have the name on that  
25 one?



1 MS. SISSON: It's going to be Katzenell.

2 THE COURT: Okay. That was Mr. --

3 MS. SISSON: It's actually the Estate of Herman  
4 Katzenell.

5 THE COURT: The Estate, right.

6 MS. SISSON: Mr. Gorski, yes.

7 THE COURT: That was Mr. Gorski. Correct.

8 MS. SISSON: Yes.

9 THE COURT: Thank you.

10 MS. SISSON: We also filed a reply at Docket 1836 to  
11 two responses that were filed after the response deadline by  
12 Mr. Graddon. Those were at Dockets 1822 and 1823. I haven't  
13 spoken with the creditor, but it's our understanding that the  
14 objection is to the dollarization of his claim at the petition  
15 date amount. And so in our reply, we've simply cited to the  
16 plan and the provisions of the Code that provide that a claim  
17 is determined in U.S. dollars as of the petition date.

18 THE COURT: Well, we have Mr. Graddon here. Should  
19 we address that claim now?

20 MS. SISSON: Sure.

21 THE COURT: All right. Mr. Graddon, good morning.

22 MR. GRADDON: Good morning, Your Honor. Good morning  
23 everyone.

24 THE COURT: Have you had the opportunity to review  
25 the reply that was submitted on behalf of the administrator?

1 MR. GRADDON: Yes, I have, Your Honor.

2 THE COURT: All right. And do you wish to add  
3 anything to your papers or make further argument?

4 MR. GRADDON: Well, the one thing I'd say, Your  
5 Honor, is that I did -- BlockFi and Kroll somehow have had my  
6 email incorrect, although it has been correct throughout the  
7 whole operation of BlockFi. And so the first time I never  
8 received the objection until very late which was why I didn't  
9 have the opportunity to respond.

10 My most recent reply they state was made on October  
11 31st. That is incorrect. I submitted that response on Friday,  
12 October 27th.

13 THE COURT: That's fine. I'm accepting it, and I've  
14 reviewed it. Do you wish to address the response to the reply  
15 with respect to basically the plan, the terms of the plan and  
16 the terms of the Code under 502(b) requiring the treatment of  
17 your claim consistent with the dollarization effort as of the  
18 petition date?

19 MR. GRADDON: Yes, Your Honor. I would like to make  
20 a couple of points. I know Your Honor has read the response,  
21 and my main point would just be that in this case, I think we  
22 are moving into a new area of law and I think in the future,  
23 these cases, the dollarization of Bitcoin specifically will no  
24 longer be an issue. This is an opportunity for the Court to  
25 recognize that now.

1 I would say that BlockFi was a cryptocurrency  
2 company. They presumably believe in cryptocurrency. They  
3 built their business around selling cryptocurrency and loaning  
4 out cryptocurrency, earning interest from cryptocurrency,  
5 paying interest in cryptocurrency, holding collateral of  
6 clients in cryptocurrency. Of all those cryptocurrencies,  
7 BlockFi has by far the strongest case as a worldwide currency.  
8 It's currently pulling developing nations out of poverty. It's  
9 the only original fully decentralized cryptocurrency with a cap  
10 supply, half-proof, untamperable.

11 There's so many arguments for why with this company  
12 in this situation, with Bitcoin specifically, there's no reason  
13 why this claim could not be in Bitcoin since that's the  
14 collateral that was trusted with them.

15 I'll give one further example. In my view, this is  
16 one more situation where BlockFi is going to be able to do a  
17 disservice to their clients in the fact that with, as an  
18 example my Bitcoin, 67 Bitcoin, it's currently worth double the  
19 amount at the petition date. So if BlockFi gave me 100 percent  
20 payback, I would actually receive 50 percent of the value of my  
21 claim and they would be able to walk away saying that they  
22 returned 100 percent. Of course, we know it won't be 100  
23 percent.

24 And by the time this is actually paid out, they may  
25 be able to say they gave me an 80 percent payback when in fact

1 I'll walk away with a 15 percent value, most likely, of my  
2 actual claim. And that's just -- the argument, Your Honor, is  
3 just that this collateral was trusted with BlockFi. I was told  
4 by BlockFi that it was kept secure with Gemini. And the entire  
5 reason for going into this agreement with BlockFi was so that I  
6 wouldn't have to sell my Bitcoin.

7           So the argument would be, Your Honor, that this is a  
8 new area of law. This is not -- this is very different from a  
9 normal security interest with stock. There is no reason why a  
10 cryptocurrency company such as BlockFi should not honor the  
11 claim and the Court should not honor the claim in the currency  
12 in which the collateral was trusted to the debtor.

13           THE COURT: All right. Thank you.

14           Ms. Sisson, any additional comments or response?

15           MS. SISSON: Just briefly, Your Honor.

16           We definitely understand where Mr. Graddon is coming  
17 from. You know, there's a lot of similarly-situated creditors.  
18 BlockFi did allow a multitude of coins on the platform, dozens  
19 of other coins other than Bitcoin and Ethereum. And so really,  
20 you know, the plan is confirmed. The plan says what it says.  
21 And in order to be able to deal with an estate of this size  
22 with tens of thousands of creditors, you know, it's something  
23 that needed to be done and is supported by the Code. And so we  
24 would just stand by the fact that, you know, we needed to do  
25 the dollarization in order to be able to administer the estate

1 properly.

2 THE COURT: All right. Thank you.

3 The Court appreciates the arguments raised by  
4 Mr. Graddon. We're addressing the claims with respect to the  
5 BlockFi Lending account and the BlockFi Inc., not necessarily  
6 the BlockFi Wallet which is Claim Number 29-265. This Court  
7 previously has addressed the differing treatment between Wallet  
8 Holders and those holding collateral claims, as well as BlockFi  
9 Inc. general claims.

10 The Court has been guided by the terms of service  
11 with respect to all of these accounts. The Court is also  
12 guided, of course, by the plan which was consistent with the  
13 Code and Section 502(b). If there needs to be changes, the  
14 Court is not in a position to make the changes. It has to be  
15 congressional changes in how claims are treated taking to  
16 account new types of claims that arise.

17 502(b) calls for the dollarization of claims as of  
18 the petition date. And the Court is not in a position to pick  
19 and choose among creditors, especially with a confirmed plan  
20 that dictates the treatment of all creditors holding all types  
21 of claims based on all differing types of tokens and coins.

22 So, again, I appreciate the issues that are raised.  
23 I don't necessarily disagree in the unfairness of it. But it  
24 would be equally unfair to start picking and choosing which  
25 creditors are afforded differing values for their claims based

1 on the nature of the coins themselves when it's inconsistent  
2 with how Congress has instructed our courts to treat these  
3 claims and the new agreement that has been reached under the  
4 plan.

5 So I'm going to sustain the plan administrator's  
6 objection. And thank you for your time.

7 MR. GRADDON: Thank you, Your Honor.

8 THE COURT: You're welcome. Thank you.

9 Ms. Sisson, anything else on your end?

10 MS. SISSON: The last thing I'll be addressing is  
11 going to the objections to Mr. Cotrim's claims. And they are  
12 on the seventh omnibus objection. They've been carried over a  
13 few times. The seventh omnibus is at Docket 1311, and  
14 Mr. Cotrim has a response filed at Docket 1483.

15 THE COURT: All right. And, again, Mr. Cotrim, I  
16 believe I saw --

17 MR. COTRIM: Yes, Your Honor.

18 THE COURT: There you are. Good morning.

19 MR. COTRIM: Good morning, sir.

20 THE COURT: All right. You had a chance to review  
21 the replies filed on behalf of the plan administrator. Let me  
22 hear from you. Any specific response?

23 MR. COTRIM: I read the response. The reason why I'm  
24 thankful for being here is to be pro se, so bring the accurate  
25 facts of what has happened to my BlockFi account, what I have

1 seen, what I have done there, Your Honor.

2 I made my millions because I was blessed  
3 (indiscernible). I'm a family man who lives in Arizona with my  
4 wife and four children. I have been the only person authorized  
5 and allowed to access my BlockFi account. My friend Juliermo  
6 is also a trader, and the great amount of my crypto on his  
7 Kucoin account and he made that transfer starting from his  
8 Kucoin account on September 13th of 2022. And I received 80  
9 Bitcoin, 8,000 Ethereum on my BlockFi account on September 15  
10 of 2022.

11 There's a screenshot, Your Honor, that I took on the  
12 16th of that same month of September 16, 2022 when I was at my  
13 home in Arizona where you can see it's 40 Bitcoin in one  
14 account, 40 Bitcoin in another account, 4,000 Ethereum and  
15 4,000 Ethereum between my Wallet and my Interest Account.  
16 Sometime after BlockFi filed bankrupt, Your Honor, I tried to  
17 log into my account. I wasn't unfortunately able to do so. I  
18 waited a while to get back to my account, and I wasn't able to.

19 In February 12th, Your Honor, I received a letter in  
20 the mail with bank forms, one for my Wallet, one for my  
21 Interest Account. I filled them both out by my myself and sent  
22 them over. Kroll, the agent, received them on the 23rd of  
23 February 2023. Sometime after that, Your Honor, on June 13th,  
24 they emailed me request for more documentation and proofs of  
25 claim. Around that time, I tried to check back in my BlockFi

1 account one more time. I was able to log in finally, and when  
2 I saw I was shocked that my Wallet Account had zero on it and  
3 all the history had been wiped out. My Interest Account had  
4 four pennies on it, and all the history for 2022 had also been  
5 wiped out.

6           On August 3rd of 2023, the debtors filed a motion to  
7 expunge one claim and to modify another claim. And I was  
8 blessed enough that on August 21st, I was able to retain  
9 Mr. Shapiro to help me with this matter. Mr. Shapiro requested  
10 BlockFi and the debtors' agent, Kroll, for extra information,  
11 some relevant information on this. And they were not giving  
12 it. No relevant information was given to us, nothing regarding  
13 hacks or security breaches or internal hack that could have  
14 happened.

15           And I also had been advised that the debtors have  
16 filed a motion to quash the subpoena, so one more reason they  
17 don't want to give out any information regarding relevant  
18 information, regarding the hack, cyber hacks (indiscernible).

19           Your Honor, many questions remain unanswered at this  
20 point on this. Once the debtors, they are only saying what  
21 they have done but we don't see any documentation from them.  
22 We don't see who is doing that research on their end. And the  
23 debtors have not met their burden of proof to sustain their  
24 objections to my claim with prima facie evidence of the  
25 deposits.



1 I do not know, Your Honor, what happened to the  
2 deposits after the petition date because I had no access to my  
3 accounts. I also do not know what happened to my accounts  
4 after that. It's my understanding that during the petition,  
5 the bankruptcy, BlockFi and Kroll, its agent, was a victim of a  
6 security breach or a hack. That was a fact. We got an email  
7 from them that Kroll had been the victim of a hack this one  
8 time they sent to everybody.

9 And I believe that my concerns about loss of my  
10 deposits and those other data hacks breach or inside hack  
11 (indiscernible) recovery from the debtors, Your Honor. Your  
12 Honor, it is with the utmost respect that I request this Court  
13 to deny the debtors' claims, the claim to modify and the claim  
14 to expunge my account. Thank you, Your Honor.

15 THE COURT: Thank you, Mr. Cotrim.

16 Ms. Sisson?

17 MS. SISSON: Yes; thank you, Your Honor.

18 As Mr. Cotrim said, he did file two proofs of claim  
19 in the case. One was asserted against BlockFi Inc. and BlockFi  
20 Lending, and the other against BlockFi Wallet. The Wallet  
21 claim is the one that we're seeking to expunge, and we're  
22 seeking to modify the other claim to one against BlockFi Inc.  
23 in the amount of four cents.

24 Mr. Cotrim submitted an initial affidavit to support  
25 the claims to Kroll stating that he deposited 40 Bitcoin and

1 4,000 Ethereum into both his IA and his Wallet accounts in  
2 September 2022. A review of BlockFi's records, which we have  
3 provided to counsel for -- former counsel for Mr. Cotrim, show  
4 that he made a small deposit of less than two Bitcoin in 2021.  
5 He traded that coin for some Ethereum, and then he withdrew the  
6 balance a few months later.

7 The four cents that's reflected in the debtors' books  
8 and records is basically an accrual of interest that occurred  
9 on a fractional portion of the Bitcoin and the Ethereum that  
10 was left in the account.

11 We provided Mr. Cotrim a full transaction history for  
12 the account. We also did a full search for emails between  
13 Mr. Cotrim and employees of BlockFi, Help Desk tickets, and we  
14 also provided identity verification requests showing the emails  
15 that Mr. Cotrim received when he sought to withdraw in April of  
16 2021. And he had to upload a selfie and his driver's license  
17 in order to initiate that withdrawal.

18 We provided Mr. Cotrim's counsel with all of the  
19 evidence that we had in relation to the account the entire time  
20 that it was open. After we provided the records, we then moved  
21 to quash the subpoena based on what was remaining that was not  
22 relevant to the claim. That motion to quash was unopposed, and  
23 it was granted by this Court on October 10th. After that time,  
24 the Court also granted the withdrawal of Mr. Cotrim's attorney.

25 The second certification that Mr. Cotrim filed in

1 relation to his claim introduces a second individual, Mr. I  
2 think it's Vieira. I'm not sure if I'm pronouncing it  
3 correctly. But the second certification indicates that  
4 Mr. Vieira is the one that initiated the deposit in September  
5 of 2022, and it states that he doesn't retain any records of  
6 the transaction.

7           Mr. Cotrim's response included two screenshots  
8 intended to support his claims. One of the screenshots I  
9 believe is showing the withdrawal of the 80 Bitcoin and 8,000  
10 Ethereum from Mr. Vieira's account. But the dates don't match  
11 what Mr. Cotrim and Mr. Vieira say when they say that occurred.

12           And then there's a second screenshot that is included  
13 which has a couple of discrepancies. First, it says that the  
14 screenshot user has three active crypto balances, but the  
15 debtors' books and records and Mr. Cotrim's claims reflect that  
16 he only ever put Bitcoin on to the platform and traded it for  
17 Ethereum. So there was never a third crypto balance in his  
18 account.

19           The screenshot he provided also shows balances of  
20 over \$6 million in both his BIA and his Wallet, and that brings  
21 me to what I think is the most important point regarding the  
22 deposit that Mr. Cotrim is alleging, which is that it is the  
23 impossibility. Per the settlement with the SEC, after February  
24 of 2022, U.S.-based BIA clients could no longer put new funds  
25 into their BIA whether that was by depositing it directly from

1 an external Wallet or from moving it from their Wallets to  
2 their BIA. And so the transaction that's represented in that  
3 screenshot is not possible after February of 2022.

4 I did confirm with BlockFi that Mr. Cotrim never had  
5 a non-U.S. address on his account and he never requested a  
6 change of address on his account.

7 And then, finally, Your Honor, as Mr. Cotrim said  
8 today, the subpoena and his response do allude to the concept  
9 of a data hack or a security breach. BlockFi has not received  
10 any reports of anything similar to what Mr. Cotrim is alleging  
11 could have happened. And I think if someone were to be  
12 attempting to fraudulently remove his coin into the platform,  
13 they would have needed (indiscernible) to remove it and also to  
14 wipe out any trace of it ever being on the platform in the  
15 first place.

16 The controls that BlockFi had in place for  
17 withdrawals means that there's no way someone could take that  
18 amount of coin off the platform even if they turned it into  
19 cash first, even if they tried to do a wire or an ACH  
20 withdrawal rather than just move it to an external Wallet. All  
21 of those occurrences would have prompted an identity  
22 verification process that Mr. Cotrim would have had to undergo  
23 in order to get that coin off the platform. And, in fact, we  
24 did provide him with records to show that he needed to complete  
25 that process when he did the withdrawal of the small quantity

1 of Ethereum in April 2021 which was the last movement that we  
2 saw initiated by him on the platform.

3 So, you know, to sum up, Your Honor, I think the  
4 books and records of the debtor are very clear. Mr. Cotrim has  
5 a claim of four cents against BlockFi Inc. and nothing more.  
6 And if the Court doesn't have any further questions, we would  
7 just ask that the Court grant the objection and that the claims  
8 be modified and expunged as per the (indiscernible).

9 THE COURT: All right. Thank you.

10 Mr. Cotrim, I see your hand raised.

11 MR. COTRIM: Yes, Your Honor. I just wanted to  
12 address that she mentioned there were three crypto in there.  
13 When I filed my claims, I did not have access to my BlockFi  
14 account, so I did the best of my ability with what really  
15 mattered which was the 80 Bitcoin and 8,000 Ethereum. The  
16 Gemini (indiscernible) is worth \$100, just to make that point  
17 to the Court. Thank you for listening, Your Honor.

18 THE COURT: All right. Thank you.

19 The Court has considered the issues raised with  
20 respect to the objection filed by the plan administrator  
21 relative to Mr. Cotrim's Claim Number 5503 for which the  
22 administrator seeks to modify. There's also a claim to expunge  
23 under Claim Number 3419.

24 The Bankruptcy Rules and the Bankruptcy Code provide  
25 for a shifting of burdens with respect to claims adjudication.

1 Bankruptcy Rule 3001(f) provides that a filed proof of claim  
2 that is prepared and complies with the Bankruptcy Rules  
3 constitutes prima facie evidence of its validity both in terms  
4 of its amount and the basis. That places the burden upon an  
5 objecting party to rebut the prima facie elements of the claim.  
6 Once that is done and in order to rebut, the objector must  
7 produce evidence which it believed would refute at least one of  
8 the allegations that is essential for the legal sufficiency of  
9 the claim.

10           If the objecting party produces sufficient evidence  
11 to negate one of the -- one or more of the sworn facts  
12 underlying the proof of claim, then the burden reverts back  
13 upon the claimant to establish by a preponderance of the  
14 evidence the validity of the claim as to both its amount and  
15 liability.

16           Here, the evidence submitted by the claimant,  
17 Mr. Cotrim, is insufficient to overcome the -- or to satisfy,  
18 rather, the burdens imposed upon by the Federal Rules of  
19 Bankruptcy Procedure and the Code. The plan administrator has  
20 rebutted in their submission the validity of these claims,  
21 taking issue with whether or not any of the claimed 80 Bitcoin  
22 or 8,000 Ethereum were ever deposited.

23           There is nothing before the Court in the records  
24 provided by the claimant apart from a suspect screenshot which  
25 would support the existence of these deposits. There are no

1 email transactions, email records, transactional records, any  
2 of BlockFi's own internal documentation which supports any of  
3 these deposits. The Court is not in a position to give  
4 credence to screenshots which are inconsistent with the facts  
5 that have been laid out in the objection and which have  
6 inherent credibility issues relative to contradictions with --  
7 that are existing with the facts of record.

8 In essence, Mr. Cotrim has not met his burden by a  
9 preponderance of the evidence as required under In re Allegheny  
10 International, which is the Third Circuit decision that lays  
11 out the shifting burdens. At this juncture, the Court has no  
12 choice but to sustain the objection filed by the plan  
13 administrator. Thank you.

14 MR. COTRIM: Thank you, Your Honor.

15 THE COURT: You're welcome.

16 Ms. Sisson, do we move on to other claims?

17 MS. SISSON: Yes. And I apologize, Your Honor. I  
18 had meant to move to admit Exhibits A and B to our reply before  
19 I began my argument. So if we could possibly do that now, I  
20 would appreciate it.

21 THE COURT: That's fine. They were attached to the  
22 submission. They are docketed, and they are of record.

23 MS. SISSON: Okay.

24 THE COURT: Thank you.

25 MS. SISSON: Thank you. Thank you, Your Honor.

1 I'm going to cede the podium to Mr. Aulet at this  
2 time.

3 THE COURT: All right.

4 MR. AULET: Thank you, Your Honor.

5 The next objection is the objection to Mr. Wynns'  
6 claims, and I see Mr. Wynns has joined the hearing. If you  
7 would like to turn it over to him or I can give a brief  
8 summation of -- he's filed both a motion and a response to our  
9 claims objection.

10 THE COURT: Well, why don't I turn to Mr. Wynns  
11 first.

12 Mr. Wynns, good morning. I have reviewed your motion  
13 and your reply that was filed. Let me give you this  
14 opportunity to amplify it.

15 MR. WYNNS: I appreciate it, Your Honor. Thank you.  
16 Good morning to you, as well.

17 THE COURT: Good morning.

18 MR. WYNNS: I have several points to make, if I may.  
19 First of all, Mr. Clarke I think said that my motion was not  
20 timely, but it was. It was filed on the 16th of October, 21  
21 days past. It wasn't entered until the 17th apparently, but my  
22 copy of the motion is file-stamped the 16th so it was timely.

23 On the other hand, the opposition to the motion was  
24 not timely. According to Local Rule 9013-2(a)(2), it should  
25 have been filed and served at least seven days before the



1 hearing and it was not. And I'd like to ask the Court to treat  
2 it as no reply, to disregard the reply and to consider the  
3 motion as unopposed in the Court's discretion.

4 And if the motion is unopposed, the Court has the  
5 discretion to grant the motion for good cause at the Court's  
6 discretion. And a citation on that is In re Franklin (1997),  
7 210 B.R. 560. So that's about the timeliness.

8 And I checked, and I think Ms. Sisson said when I  
9 spoke to her a few weeks ago that BlockFi Inc. does have the  
10 Bitcoin to repay my small amount of Bitcoin, 4.22 Bitcoin. And  
11 that is shown by BlockFi's own records attached to an exhibit  
12 to my objection and response to the tenth omnibus objection to  
13 certain claims. And according to their assets and liabilities  
14 statement on Point 77.3, they mentioned on that place that they  
15 had \$3,262,500 worth of Bitcoin just there. And I'm sure they  
16 have much more in other places.

17 I also pointed out in my moving papers that our  
18 contract with BlockFi agreed that that's my Bitcoin. I have  
19 the ownership and rights to the Bitcoin. They were only  
20 supposed to hold it for security. And contrary to what I think  
21 I saw in Mr. Clarke's proposed opposition, I was never given a  
22 margin call on that. I was always proper and complete on my  
23 loan situation with BlockFi.

24 What BlockFi used to do is send its customers a  
25 warning that Bitcoin price had dropped and they needed to make

1 a further deposit to avoid a margin call. And I always did  
2 that. I was always in fine status with them and always willing  
3 and able to pay that loan off. I just didn't find it  
4 convenient to do so and was taken by surprise when they filed  
5 for Chapter 11. And at that point, they refused to be paid off  
6 and said that they were freezing the interest.

7 And I want to do the equitable thing here, Your  
8 Honor, and pay them what I owe in principal and interest on my  
9 two loans, which at last accounting was approximately \$42,000.  
10 I don't mind if they add additional interest on that for the  
11 intervening months. I just want to be equitable here, Your  
12 Honor. But according to my moving papers and a few authorities  
13 that I cited, I do have the right to get my Bitcoin back. And  
14 I'm simply asking the Court to approve my claim. I filed my  
15 claim in BlockFi Inc. back on January 10th of this year, and I  
16 wasn't sure who had the Bitcoin so I filed additional claims  
17 against their other entities.

18 But it's a very small amount of Bitcoin, but it's  
19 very important to our retirement savings. I'm 77; my wife is  
20 76. And we cannot wait years to see what happens with this.  
21 We need to get our Bitcoin back, and that is why I have made  
22 this motion.

23 Your Honor, I don't believe they have presented any  
24 evidence at all. I appreciate your citing the Allegheny case.  
25 I know you're very familiar with it. I was going to cite it to

1 you, but there's no need for that because you know all about  
2 it. And my claim was specifically that I wanted and was  
3 entitled to the return of those 4.22 Bitcoin in specie.

4 The tenth omnibus objection to certain claims  
5 mischaracterized my proofs of claim as being for a money  
6 amount. Now I did state the approximately money amount it was  
7 worth on a claim at that time as being around \$79,000. But I  
8 was very clear in Point 6 and 7 on my attachment to the  
9 original proof of claim and the others were basically identical  
10 that I was entitled to and was asking for the return of the  
11 Bitcoin in specie.

12 So what I'm asking Your Honor to do is approve my  
13 claim and/or claims and also direct the debtors' counsel to  
14 cooperate with my in deciding how much interest needs to be  
15 paid back and make arrangements for returning the 4.22 Bitcoin.  
16 Now there's also a little bit of other cryptocurrency. I don't  
17 know if it's in the Wallet or in the Interest Account, but it's  
18 about \$2,000 worth I think. And if you could add that to the  
19 order too, Your Honor, I'd be grateful.

20 So I think Your Honor is all on top of this, and I  
21 probably don't have to say more. But I wanted to mention also  
22 that the Court has brought equitable powers to make an order in  
23 the interest of justice. And that has been upheld both by the  
24 Supreme Court in the United States vs. Energy Resources, 495  
25 U.S. 545 (1990), as well as in an earlier decision from 1939,

1 308 U.S. 295 at Pages 307-308.

2           The Court has broad equitable powers to make whatever  
3 order is right and equitable within the confines of the  
4 Bankruptcy Code. So I would very much appreciate, Your Honor.  
5 There's really -- I was really surprised that anybody wanted to  
6 reply to my objection because it's such a small amount of  
7 Bitcoin and so important to our family and it's so documented  
8 by Bitcoin's own statements -- I mean BlockFi's own statements  
9 that there really shouldn't be much dispute about it.

10           So I will appreciate it, Your Honor. I want to  
11 mention, too, that I said in my papers I thought I'd filed a  
12 notice of appearance and request for documents which I find  
13 that I did, Document Number 119 in the record. And I asked for  
14 all notices pursuant to Rule 2002 and also all pleadings and  
15 documents, and I don't think I ever got anything. I don't  
16 recall getting anything before I finally a few weeks ago got  
17 this omnibus objections, tenth omnibus objections paper.

18           So anyway, that's the situation, Your Honor. And in  
19 the interest of justice, I'd very much appreciate it if you  
20 would approve my claim and order that the debtors' counsel work  
21 with me for repayment and for provisions to provide my  
22 cryptocurrency back to me. Thank you very much.

23           THE COURT: Thank you, Mr. Wynns.

24           Mr. Aulet?

25           MR. AULET: Good morning, Your Honor.

1           So the plan administrator is certainly sympathetic to  
2 Mr. Wynns' plight here. BlockFi owed a great deal of money and  
3 crypto to a lot of people, and they are certainly entitled to  
4 their money. The issue, of course, is why we're here that  
5 BlockFi simply doesn't have it.

6           As, you know, Mr. Wynns reflected -- said, the  
7 debtors originally objected to Mr. Wynns' claim on the tenth  
8 omnibus objection as inconsistent with the books and records.  
9 There's a couple of key issues here. I think there's a very  
10 minor dispute over the exact amount of Bitcoin. We think it's  
11 4.209 versus Mr. Wynns' calculation of 4.22. But ultimately,  
12 this is a legal question. What are Mr. Wynns' rights against  
13 BlockFi Lending and what is his claim.

14           We've interpreted Mr. Wynns' claim to be a secured  
15 creditor as essentially arguing that he has a property interest  
16 in the Bitcoins in a manner similar to the BlockFi Wallet  
17 rather than an unsecured claim. Unfortunately, Mr. Wynns is  
18 simply not correct. The key part of his loan agreement is  
19 Section 4D, and Mr. Wynns attached his loan agreement to his  
20 response. It's Docket Number 1633.

21           And Page 23 of that PDF begins that section. The  
22 relevant language is on Page 64 where the contract reads that,  
23 "Borrower agrees that lender may for its own account pledge,  
24 re-pledge, hypothecate, re-hypothecate, sell, lend, or  
25 otherwise transfer or use any amount of such collateral

1 separately or together with other property with all attendant  
2 rights of ownership from time to time without notice to the  
3 borrower or to any of the collateral and that lender may do so  
4 without retaining in its possession or control for delivery a  
5 like amount of similar collateral."

6           And the issue, Your Honor, is that that makes what  
7 Mr. Wynns holds an unsecured claim for the return of his  
8 collateral. Just like every other lending customer, Mr. Wynns  
9 pledged his collateral and he has an unsecured claim for its  
10 return. BlockFi Lending LLC does not have the assets to meet  
11 those unsecured claims. That claim, unfortunately, on filing  
12 of the petition became an unsecured claim and was converted  
13 into dollars pursuant to Section 502(b) of the Bankruptcy Code.

14           I'd note -- and so Mr. Wynns essentially became an  
15 unsecured creditor in the amount of approximately 68,000, and I  
16 believe that is before the setoff that he is entitled to under  
17 the current plan.

18           That language that I just cited is similar to the  
19 language that was in the BIA account where Your Honor held that  
20 that created an unsecured claim. And it is similar to language  
21 in more traditional finance lending arrangements such as we  
22 cited a case from the Lehman Brothers Liquidation where a bank  
23 had pledged collateral to a Lehman entity with similar language  
24 that Lehman was allowed to re-hypothecate, sell, or otherwise  
25 dispose of the collateral.

1           There's a number of factual differences in the  
2 setting of that case, but it's specific that when -- that that  
3 becomes an unsecured claim for the return of the collateral.

4           And all that is why, Your Honor, the plan treated  
5 loan collateral claims in this way. The loan collateral claims  
6 are converted into dollars as of the petition date. Any  
7 creditor will be -- will automatically get the benefit of the  
8 setoff. BlockFi will not be seeking to have Mr. Wynns repay  
9 his loan, or Mr. Wynns could have opted into the loan repayment  
10 program but that would not have been able to deliver Mr. Wynns  
11 the 4.2 Bitcoin he requests because, again, Mr. Wynns is an  
12 unsecured creditor and BlockFi Lending simply does not have the  
13 assets to make unsecured creditors whole.

14           As a result, the plan is a separate and independent  
15 reason for why Mr. Wynns' claim must be modified in the amount  
16 specified in the tenth omnibus objection that the plan was  
17 confirmed without objection by Mr. Wynns to treat his claim in  
18 that way. But he's a pro se creditor. We're not trying to  
19 have a "gotcha" here. The plan was right to do what it did.  
20 And although it is a severe hardship to Mr. Wynns and every  
21 other creditor, that is unfortunately what the facts and  
22 circumstances and the Bankruptcy Code require in that  
23 situation.

24           The only other thing that I would mention is that  
25 Mr. Wynns objects that the plan administrator's response to his

1 motion -- and just to reiterate, the motion essentially  
2 duplicates his objection to the tenth omnibus objection, seeks  
3 the same relief. We filed a -- the motion simply refers to his  
4 objection. We filed a relatively perfunctory response that  
5 again simply refers to our forthcoming reply to his objection.  
6 But that was filed on the 30th, and so it was timely under the  
7 Local Rules.

8           Mr. Wynns is a pro se creditor. If he needed  
9 additional time, we would of course have been willing to push  
10 this. But based on Mr. Wynns' presentation, it doesn't appear  
11 that he lacked the time to prepare for this hearing. And so  
12 we'd request that that objection to the timeliness of the  
13 response to his motion be overruled.

14           And with that, I have no further points, Your Honor.

15           THE COURT: Thank you, Mr. Aulet.

16           Mr. Wynns, do you wish to respond?

17           MR. WYNNS: Yes. Your Honor, concerning the  
18 contract, Mr. Aulet is trying to say that because there is some  
19 language in the contract that says that BlockFi couldn't  
20 dispose of, hypothecate, trade, or whatever Bitcoin, I'd like  
21 to point out that Your Honor reads the contract as a whole.  
22 And as I pointed out, there was very specific language in that  
23 contract stating that I was the owner of the Bitcoin. It was  
24 my Bitcoin, and they were holding it for security.

25           And I would suggest, Your Honor, that the language



1 that Mr. Aulet was referring to is intended for cases where  
2 there is a default and that it allowed BlockFi to do what it  
3 needed to do or wanted to do in case the borrower defaulted on  
4 the loan and they had to sell the Bitcoin or do what they  
5 needed to do. But that never occurred in my case, and there  
6 has never been any evidence presented before this Court that  
7 anyone ever did sell, pledge, hypothecate, or whatever my  
8 Bitcoin. Now there is simply no evidence of that.

9           So as Your Honor pointed out from the Allegheny case,  
10 in order to shift the burden, evidence must be presented to  
11 show that the plan is invalid. And there was certainly no  
12 evidence at all presented in the tenth omnibus objections  
13 filing. All it did was refer to my proofs of claim and give  
14 them a dollar amount and completely ignore the fact that my  
15 claims were very expressive and clear that I was claiming to be  
16 a secured creditor and why. And in my attachment specifically  
17 on Point 6 and 7, I stated relevant points to that and said  
18 that it was my property and I was intending to pay what was due  
19 in order to get my property back and asking the Court to order  
20 that the debtors' counsel cooperate with me to see that that  
21 happened.

22           So that's a facetious argument pointing to a little  
23 bit of language in the contract which is contradictory to other  
24 express and specific language that I pointed out in my papers  
25 that say that I remain the owner of the Bitcoin and they're

1 only holding it for security. And there is no reason to invoke  
2 that language that Mr. Aulet pointed out if there wasn't any  
3 default, and there never was. I kept my agreement perfectly  
4 with BlockFi, and I was entitled at any time to pay off my  
5 loans and to have my BlockFi [sic] back except that by filing  
6 for Chapter 11, the debtor prevented that.

7           So the equitable result here, Your Honor, and I'm  
8 trying to be perfectly equitable, is to order that my claim is  
9 upheld or my claims. It seems like Mr. Aulet was suggesting  
10 that more of the Bitcoin is held in BlockFi Lending or Trading  
11 or something like that. But I'm sure it's all covered, but  
12 it's very little Bitcoin, but as you know, a Bitcoin today is  
13 worth about 35,000 per Bitcoin. That's a very substantial part  
14 of our retirement savings.

15           So to be equitable here, Your Honor, I ask that my  
16 claims be sustained or such claims as needed to be sustained --  
17 I think Ms. Sisson said some of the entities don't have any  
18 assets, so that's fine -- and to direct the debtors' counsel to  
19 work with me so that I can get my 4.22 Bitcoin back.

20           Thank you, Your Honor.

21           THE COURT: Thank you, Mr. Wynns.

22           All right. This matter comes before the Court on the  
23 objection by the plan administrator to various claims as part  
24 of the seventh -- I'm sorry, the tenth omnibus objection. At  
25 issue specifically are the claims of Mr. Wynns, Claim Number

1 1324 and Claim Number 3052. This Court has jurisdiction over  
2 this matter pursuant to 28 U.S.C. Section 1334. This is a core  
3 matter under 28 U.S.C. Section 157(b).

4 I've already explained in prior matters the shifting  
5 burdens, and Mr. Wynns is very familiar, as he's noted, with  
6 the In re Allegheny International case out of the Third Circuit  
7 at 954 F.2d. 167.

8 Mr. Wynns implores the Court to use its equitable  
9 powers. And the Court is again, like the plan administrator,  
10 sympathetic with the reasons why it should -- it would be  
11 appropriate if possible to offer equitable relief. The problem  
12 is it's not possible. The Supreme Court has made it clear in  
13 Law v. Siegel that bankruptcy courts do not possess the power  
14 to use its equitable jurisdiction, its equitable authority when  
15 it contravenes specific statutory rights or other fundamental  
16 rights under the law, and that's what we have here, that as a  
17 matter of law, Mr. Wynns, unfortunately, you're not entitled to  
18 the return of Bitcoin.

19 This Court has already ruled in this case, it has  
20 become law of the case, with respect to BIA accounts that there  
21 was a difference in the terms of agreement between the various  
22 accounts. And the Wallet Holders negotiated in their terms of  
23 service for certain rights to retain title to the Bitcoin that  
24 was entrusted with the debtor. And this differs significantly  
25 from the terms of agreement in both the interest accounts and

1 the loan collateral accounts, the loan accounts.

2 And I have to disagree with your interpretation of  
3 the language that was cited, Section 4D of the loan agreement.  
4 And I appreciate that your argument is that such language  
5 should only come into effect when there's a default, but that's  
6 not what the language says. It says that the lender may for  
7 its own account "pledge, re-pledge, hypothecate, re-  
8 hypothecate, sell, lend, or otherwise transfer or use any  
9 amount of such collateral separately or together" -- and this  
10 is where it's important -- "with all attendant rights of  
11 ownership from time to time without notice to the borrower."  
12 It's not limiting its rights to a default.

13 And it's that language that other courts, and I'll  
14 refer to Judge Glenn's opinion in the Celsius Networking matter  
15 -- I'm sorry, In re Celsius Network LLC, 647 B.R. 651, that  
16 used comparable language that -- interpreted comparable  
17 language to limit the ability of certain accountholders to  
18 retain interest in their digital assets. The fact is that  
19 those who are customers as part of the loan accounts and had  
20 loan collateral claims are treated differently under the terms  
21 of service and also treated differently under the plan, which  
22 is a binding agreement between the estate and the creditors and  
23 the parties in interest.

24 The plan has been confirmed. And, indeed, Article 3  
25 of the plan, Section C.4 reiterates that loan collateral

1 claimants such as yourself will receive pro rata distributions  
2 of the remaining dollarized value of their collateral in either  
3 digital assets or cash according to the terms of the confirmed  
4 plan and that claimants who do not elect loan repayment  
5 treatment will have their outstanding loan balances set off  
6 against the dollarized value of their claim, and they will  
7 receive pro rata distributions on the remaining claim amount in  
8 either digital assets or cash according to the terms of the  
9 confirmed plan.

10           The plan does not provide for a return of your  
11 specific Bitcoin or other digital assets for those with loan  
12 collateral claims. It provides for a pro rata distribution of  
13 either cash or digital assets at a dollarized value as of the  
14 petition date.

15           I have accepted the filings. Even if I were to  
16 consider the plan administrator's response to your motion as  
17 being late, it wouldn't matter. As a matter of law, your  
18 motion cannot be granted. The interpretation of the language  
19 of the terms of service agreement are consistent with other  
20 courts beyond simply digital currency bankruptcy filings. And  
21 this Court is required to enforce the terms of the confirmed  
22 plan and to treat all creditors within the class of claims that  
23 you hold the same.

24           And the Court's not in a position, even if equity  
25 were to compel a different result, to treat creditors

1 separately. I have to treat all creditors the same across the  
2 board. For those reasons and for the reasons set forth in both  
3 the objection to the claim and the reply, the Court denies,  
4 Mr. Wynns, your motion for turnover of the Bitcoin and sustains  
5 the objection filed by the plan administrator. Thank you.

6 MR. WYNNS: Thank you, Your Honor.

7 But just a remark there, there's no evidence, no  
8 evidence was presented to the Court that they ever did any of  
9 those things, sell, hypothecate, re-pledge, or whatever. Even  
10 granting for the sake of argument that they had the right to do  
11 that, and your interpretation of the contract based on other  
12 court rulings as well apparently is that they had the right to  
13 do that, there's no evidence that they ever did. And there's  
14 clear language in the contract contradicting that that says the  
15 Bitcoin belongs to me.

16 THE COURT: I understand your position. We'll just  
17 have to disagree. Thank you.

18 MR. WYNNS: Thank you, Your Honor.

19 THE COURT: All right. Thank you.

20 Mr. Aulet, are you continuing with other claims?

21 MR. AULET: No, Your Honor. I'm going to cede the  
22 virtual podium to Mr. Kanowitz.

23 THE COURT: Mr. Kanowitz, good morning.

24 MR. KANOWITZ: Good morning, Your Honor.

25 Richard Kanowitz, Haynes and Boone, for the plan

1 administrator. Your Honor, this is hopefully going to be very  
2 brief. This is in connection with the eleventh omnibus claim  
3 objection. Mr. Lymn has filed a response. Your Honor's  
4 rulings today as well as in the past dictate the outcome.  
5 We're just seeking to reduce an overstated unsecured claim to  
6 dollarize it as of the petition date based on the Bitcoin  
7 pricing at that time. It's a reduction of about \$500,000. All  
8 of the arguments that were raised in the response have been  
9 addressed today, whether you're talking about the plan  
10 construct, the Bankruptcy Code construct. This is an unsecured  
11 claim that is entitled to treatment pursuant to the Code and  
12 the confirmed plan.

13           The other issue raised in the response, again, you  
14 touched on at confirmation was whether or not the plan  
15 administrator winddown debtors could bring a claim objection.  
16 Your Honor previously ruled on it. I don't need to rehash Your  
17 Honor's verbiage. That's found in the transcript that we cited  
18 to. But the reality is this. Under 502(a), any party in  
19 interest can object to the claim. This claim objection was  
20 filed on September 6th by the debtors, the Committee. A party  
21 in interest joined.

22           The winddown debtors take from both the debtors  
23 and/or the Committee, therefore, the claim objection is still  
24 live irrespective of whether Your Honor found -- and I don't  
25 think you should find -- a waiver and/or some sort of estoppel.

1 None of the elements for waiver and/or estoppel can be  
2 established. The reality is is that this was a  
3 misinterpretation by Mr. Lymn of the plan and how the claims  
4 reconciliation process would work. And we would ask Your Honor  
5 to simply reduce this unsecured claim by approximately \$500,000  
6 as we set forth in the claim objection.

7 And I'll reserve any time for Your Honor's questions  
8 or rebuttal. I believe that Ms. Gelfand is here to argue on  
9 behalf of her client. And he did submit a declaration which we  
10 have no objection to being submitted as part of the record, and  
11 we have no cross-examination for Mr. Lymn.

12 THE COURT: All right. Thank you.

13 Ms. Gelfand, good morning.

14 MS. GELFAND: Good morning, Your Honor. Thank you  
15 for entertaining us today. You may recall that at the  
16 confirmation hearing, Your Honor indicated that perhaps this  
17 matter was more fit and was actually a matter that should be  
18 dealt with on the objection to claims. You invited us back,  
19 and all the rights of my client at that time were reserved.

20 I do want to point out a few things; first of all,  
21 the proof of claim. The proof of claim was filed by former  
22 counsel, not Akerman. It was very clear with a rider  
23 explaining why and how it was valued. It was no intention to  
24 just use a value and not explain it. We are actually in a very  
25 different position from the other creditors in this case,



1 including the other creditor who just went before us seeking  
2 equitable relief. Only my client has raised the issue of  
3 equitable estoppel as to the debtors' objection.

4           As Your Honor appreciates, equitable estoppel has  
5 three elements, and we believe they've all been met today. The  
6 first one is a representation made to induce an action. I  
7 don't believe there's any dispute that the purpose of the plan  
8 is to induce a creditor from the debtors' standpoint to accept  
9 the plan.

10           The second element is reliance. In his declaration,  
11 Mr. Lymn testified that he relied on the representation in the  
12 plan that the claim objection to his claim would be released.  
13 It appears that the winddown debtors' position is that it was  
14 unreasonable for Mr. Lymn to rely on the definition of causes  
15 of actions that stated that the debtor was releasing "any right  
16 to object to or otherwise contest claims or interests." That's  
17 a definition.

18           It appears that winddown debtors believe that the Mr.  
19 Lymn had a duty to go all through the plan, look at every  
20 article, determine if these articles contradicted the plan  
21 language of the definition of cause of action and, to go even  
22 farther, outside the plan to the disclosure statement to see  
23 what that was about. I don't want to re-argue what we argued  
24 at confirmation. A lot of that appears to be re-argued by the  
25 winddown debtors.

1 But I do want to point out the debtors painstakingly  
2 put in the plan in almost all the articles and in the articles  
3 relied upon by the winddown debtors except as provided in the  
4 plan. It always says here's the representation except as  
5 provided in the plan. Again, it's the client's position that  
6 the plan provided for this release right in the definitions.

7 As far as changing positions, there's no dispute that  
8 Mr. Lymn changed his position, the third element. It's in his  
9 declaration. The winddown debtors point to a conversation  
10 taking place after voting was closed where we were advised it  
11 was never the intention to release objections to claim. Yet,  
12 the release was placed in the plan, specifically in the  
13 definitions. The relevant conversation is not what took place  
14 after Mr. Lymn relied. The relevant time is when he was making  
15 the decision of what to do, and that was a Friday afternoon.  
16 And it is not my favorite day. I don't like doing these  
17 ballots the last day at the last hour in case there's a glitch.

18 But here we found ourselves because the client was  
19 struggling. Should he opt out of the third-party release like  
20 a lot of the ad hoc members did -- 10,000 we heard at the  
21 confirmation hearing -- or should he vote to accept the plan  
22 and not opt out. And he knew that there was going to be this  
23 objection to his claim. He knew his claim was disputed. I  
24 made a call to the Committee before we voted, and I said I got  
25 to tell you guys I think you released objections to claim. I

1 got a call back later saying we brought it to the debtors'  
2 attention, it's going to be fixed. Well, I'm not going to go  
3 back to the fix. We know that the debtors came to this Court  
4 and they did get confirmation and the Court did find that  
5 1129(a) had been met.

6           However, at the time that Mr. Lymn voted, it was  
7 clear under the plain language of the plan to this creditor  
8 that his claims objection was being released. I want to talk a  
9 little bit about accountability. These crypto cases have been  
10 a learning experience for all of us, and it's been incredibly  
11 fascinating to watch them travel through the different courts.

12           BlockFi who filed last clearly did a fantastic job of  
13 getting this plan confirmed early on. But that doesn't mean  
14 that there's no accountability. There's no accountability to  
15 read the definitions to make sure the general release is  
16 correct. If you're going to read anything, it would be general  
17 release and the exculpation clause.

18           And the accountability even goes farther than that  
19 because creditors like Mr. Lymn, it's their first interaction  
20 with the federal courts. He's never been in a federal court.  
21 And I'm sure there are many many many other creditors in the  
22 same situation. And that's why the Court has painstakingly  
23 made this venue friendly to all these pro-se creditors, put  
24 special procedures on the webpage, opened up the Zoom because  
25 these creditors are coming here and they're going to walk away

1 with an impression of what happens in this federal court.

2 And if the debtor is not held accountable at this  
3 stage on an equitable estoppel theory for making a promise and  
4 then turning around and changing that promise after a creditor  
5 relied and changed position, that's the real issue. And making  
6 the debtors accountable on this, it's the little little thing  
7 in this case. They got their confirmation. They got their  
8 technical amendment. And, you know, you can understand why  
9 amendments that are more than technical require resolicitation  
10 so we don't find ourselves in these crazy positions that we are  
11 in today which is a creditor who relied on a plan, gave up  
12 rights, and now is being told, no, you shouldn't have relied on  
13 it. You actually should have read everything and made a  
14 decision like Your Honor made. But the client wasn't the  
15 judge.

16 And as far as the joinder, Your Honor, this objection  
17 is not going to be alive after today. It will be res judicata.  
18 The Committee made a decision to not file their own objection.  
19 Instead, they join in support. That's their language the  
20 debtors' objection. So the Committee as a joinder, they're  
21 joining rises and falls on the debtors' objection. Your Honor,  
22 we ask that you look at this a little differently.

23 My client's equitable request does not contravene the  
24 legal rights of others. No one else is similarly situated.  
25 There will be no floodgates on this that will open. The appeal

1 pending does not address this issue. My client's in a unique  
2 position. The debtors, Committee, and everyone else who read  
3 that plan should be accountable for putting a general release  
4 of the objections to claim in the definitions and in the plan  
5 itself. And Mr. Lymn because he relied on it in good faith  
6 should be allowed his claim, Your Honor, in the full amount.

7 Thank you.

8 THE COURT: Let me just clarify before I turn back to  
9 Mr. Kanowitz. Mr. Lymn, when you say he relied and gave up  
10 certain rights, what did he give up by voting?

11 MS. GELFAND: He gave up the -- he voted in favor of  
12 the plan --

13 THE COURT: Right.

14 MS. GELFAND: -- which he may have done anyway  
15 because Mr. Lymn had no desire to delay distribution. But as  
16 his declaration states, he would have opted out of the  
17 third-party release. He would have been in a position to join  
18 class actions that may be brought against third parties. We  
19 have 10,000 creditors who opted out. And now Mr. Lymn --

20 THE COURT: Well, wasn't he given that opportunity?

21 MS. GELFAND: He wouldn't get the release, Your  
22 Honor. He wanted the release. In exchange for the general  
23 release of the objections to claims, he had to do two things:  
24 vote in favor of the plan and not opt out. And it was a  
25 no-brainer. At that point, they released it. Of course, I

1 want that release. If he had decided to opt out, he would not  
2 have been entitled to the release.

3 THE COURT: But he had that opportunity to decide to  
4 opt out? It didn't change based on the language. He always  
5 had that opportunity, correct?

6 MS. GELFAND: Yes, Your Honor. But from an equitable  
7 estoppel position, the debtor makes a representation intending  
8 that the creditor rely on it. They represent all claims  
9 objections are released in the definition of causes of action  
10 right in Article 1. Mr. Lymn relies on that, and he changes  
11 his position.

12 THE COURT: But he --

13 MS. GELFAND: He doesn't opt out.

14 THE COURT: But he's afforded -- before there are any  
15 consequences from his decision on how to vote, he's afforded  
16 the opportunity to change his vote. The debtor recognizes that  
17 there's a language issue, and before there are any  
18 consequences, before a plan is confirmed, before the process is  
19 even completed, they come in and they make a modification and  
20 they recognize -- they make the modification for clarity. They  
21 recognize that it might have an impact on his choice, and they  
22 say go ahead, change your vote.

23 So where has he been prejudiced?

24 MS. GELFAND: Unfortunately, Judge, the changing of  
25 the vote after the fact is not how the damages are looked upon

1 when you have equitable estoppel. The equitable estoppel  
2 arises what did he give up, and then we look back. We don't  
3 look forward and say you could have changed your vote. He  
4 wanted the release.

5 I mean, from a damage standpoint with equitable  
6 estoppel, it's not what he gave up as far as the opt-out. It's  
7 what he didn't get. He --

8 THE COURT: But what he wanted was something that  
9 nobody else could get and would have created as I found earlier  
10 an absurd situation where any claim would be valid simply by  
11 accepting. It could have been for billions.

12 MS. GELFAND: And nobody hopped on the bandwagon.  
13 And I really worked with the debtor. But the fact doesn't  
14 change. The language is in there, and the fact that only  
15 Mr. Lymn, number one, caught it and alerted the debtors and,  
16 number two, took advantage of his rights. And that's even  
17 perhaps more of a reason when we get back to accountability to  
18 give Mr. Lymn this relief because it won't open the floodgates.

19 I think in other jurisdictions and different  
20 circumstances, perhaps other creditors would have jumped on  
21 this bandwagon. We cannot change that they put that in their  
22 definition, and we cannot change Mr. Lymn's declaration that is  
23 not disputed.

24 THE COURT: All right. Thank you. Let me hear from  
25 Mr. Kanowitz. I appreciate it.

1 MR. KANOWITZ: Your Honor, you have it right. Let me  
2 break this down. The issue today is whether Mr. Lymn has an  
3 excessive claim; he does, period, end of story. As a matter of  
4 law, it should be reduced. The question of voting or not  
5 voting has nothing to do with whether or not the winddown  
6 debtors can bring a claim objection. It's just that simple.  
7 One issue has nothing to do with the other.

8 If a creditor didn't vote at all but still has an  
9 excessive clam, the winddown debtors get to bring a claim  
10 objection. Okay, so they're separate and apart. The idea that  
11 Mr. Lymn gave up something by voting one way or another, he  
12 didn't. He can't rely on his own imagination and say I'm  
13 going to interpret language this way, I'm going to vote a  
14 certain way, and then I'm going to give up rights. He didn't  
15 give up any rights. All he gave up was any voting to approve  
16 or reject -- he voted to approve -- or opting in or opting out  
17 of a third-party release. And he made decisions, nothing to do  
18 with his claim objection.

19 What he wants you to do is to actually believe that  
20 the debtors wrote in in the first instance a waiver. That's  
21 not what we wrote in. That's not what this Court found. We  
22 clarified it. We told him about it, and he still wants to go  
23 down this route saying, oh my vote impacted the ability to  
24 object to a claim. And that's not true. They're separate and  
25 distinct.



1 And getting back to the issue of who could bring a  
2 claim objection, the Committee raised this issue. It's live in  
3 front of Your Honor, okay, so you have parties in interest  
4 protecting the estate from excessive claims. That's all we  
5 have here, okay. You don't even have to reach the issue of  
6 voting, not voting, and what that meant. You could just see  
7 that there was an outstanding claim objection by the debtors  
8 that was joined by the Committee that has to be upheld in  
9 accordance with 502(a) and the way the plan has been written  
10 and construed by Your Honor.

11 THE COURT: All right. Thank you, Mr. Kanowitz.

12 Ms. Gelfand, any response?

13 MS. GELFAND: I would just say that this is not a 502  
14 issue at this point. Yes, they brought the objection under  
15 502, but the creditor has brought a defense, an equitable  
16 defense saying they put a general release in the Article 1  
17 definition of causes of action. I relied on it, no one  
18 disputes it. I changed my position by giving up third-party  
19 claims, no one disputes it.

20 That's what this is about. I recognize and concede  
21 that the proof of claim filed by former counsel, by the way,  
22 not Akerman LLP, the proof of claim did not value on the day of  
23 the November filing and there was a whole rider attached as to  
24 their thinking. And we just heard from a creditor his  
25 thinking, but we're different than that creditor. And I think

1 it's a good thing no one else jumped on it. But I do think  
2 accountability, just a little accountability says you put it in  
3 there, it's not the creditor's job to go to disclosure  
4 statements and all these paragraphs and say they didn't mean to  
5 release it.

6 And that would be really where we would rest, Your  
7 Honor. Thank you.

8 THE COURT: Thank you.

9 The Court is familiar with the issues that have been  
10 raised. Obviously, the Court addressed it as part of the plan  
11 confirmation process and found that the interpretation of the  
12 language when this Court took the disclosure statement and the  
13 plan as a whole as well as in the context of how Chapter 11 are  
14 prosecuted and the claims allowance procedures that are  
15 recognized, viewed the interpretation of Mr. Lymn as being  
16 untenable as far as what the impact would be. It could  
17 possibly lead to absurd results.

18 The Court is cognizant of the argument of equity.  
19 The Court is familiar with case law that repeat that equitable  
20 maxims must be applied flexibly so that you cannot apply an  
21 equitable rule in a fashion that will operate inequitably. And  
22 if we were to do so here to allow this claim in this amount in  
23 this fashion as sought by Mr. Lymn, it would in effect impair  
24 the rights of other creditors who are going to receive less  
25 than they're entitled to necessarily. That's not equitable,

1 either.

2 Mr. Lymn had the opportunity to adjust his actions  
3 prior to any consequences from his voting. He was well aware  
4 of the position that the debtor would take with respect to his  
5 interpretation. He was well aware that the Committee and  
6 ultimately the plan administrator would take opposing view. He  
7 had the opportunity to adjust his actions in such a fashion  
8 that he would be treated like all other claimants holding the  
9 same type of claims in his class.

10 The Court is going to sustain the objection of the  
11 plan administrator. It's a creative and certainly an objection  
12 which I believe will probably be instructive in other cases  
13 when drafting language. But at the end of the day, Mr. Lymn is  
14 not being prejudiced in any other fashion as compared to other  
15 creditors with the same types of claim. And we can't use an  
16 equitable rule that will in effect treat others inequitably.  
17 So the objection is sustained.

18 Thank you, Ms. Gelfand.

19 MS. GELFAND: Thank you, Your Honor.

20 THE COURT: Mr. Kanowitz or Mr. Aulet, do we have any  
21 other matters?

22 MR. KANOWITZ: Yeah, I think Mr. Aulet was going to  
23 address some open matters with the Court.

24 THE COURT: All right. Thank you.

25 MR. AULET: Yes, Your Honor. We just wanted to

1 preview for you where the Three Arrows objection is at. We  
2 have agreed on a mediator and expect to submit an agreed-on  
3 mediation order to Your Honor shortly.

4 THE COURT: All right.

5 MR. AULET: Most likely later this week. We have for  
6 the most part agreed on a schedule with one open issue that we  
7 are likely to submit to Your Honor for resolution this week.  
8 But we believe that we've got all of the dates agreed to. That  
9 said, of course, there are discovery issues and if any of those  
10 discovery issues on either side require the Court's  
11 intervention, we will bring those to Your Honor at that time.

12 THE COURT: Thank you. Where do we stand with the  
13 FTX claim? That's going to be resolved in Delaware?

14 MR. AULET: It's going to be resolved in Delaware,  
15 Your Honor. We're working with the FTX debtors on the motion  
16 to lift the automatic stay that was provided for in the  
17 settlement agreement with the FTX debtors and the BlockFi  
18 debtors as well as working out the schedule for mediation  
19 that's called for under that settlement.

20 THE COURT: What will we be doing with the objection,  
21 I think it's at 1376 on the docket, to the FTX claim? Am I  
22 carrying it for now or will we be -- or will you all be  
23 withdrawing it?

24 MR. AULET: We would like it carried for now. Once  
25 the order lifting the automatic stay is entered, at that point

1 we would -- we believe it should be withdrawn. But until that  
2 order lifting the automatic stay and implementing the mediation  
3 is entered, it should be carried, Your Honor.

4 THE COURT: Then we'll just carry it to the 28th  
5 date. I believe we have a date -- do we have the 28th? I  
6 think we have a January date. We're probably going to need to  
7 come up with some additional dates, correct?

8 MR. AULET: Correct, Your Honor. I believe that we  
9 also submitted a proposed December omnibus date. I don't  
10 unfortunately remember what it is off the top of my head.

11 THE COURT: Let me take --

12 MR. AULET: But we can get in touch with your  
13 chambers and set a number of upcoming omnibus dates if that  
14 would work for Your Honor.

15 THE COURT: I think it always works best when they  
16 leave me out of it. So I'll let you speak with my chambers and  
17 Becca Earl.

18 All right. Just for the record, I note we do have  
19 Mr. Sponder, the U.S. Trustee sitting here. He couldn't resist  
20 coming down. Are there any other issues that anyone wishes to  
21 address? Mr. Sponder?

22 MR. SPONDER: Thank you, Your Honor.

23 Jeff Sponder from the Office of the United States  
24 Trustee. The issue that I was here for thankfully Ms. Bielskie  
25 was on earlier with respect to the redactions, so that was

1 taken care of. But we have no other issues, Your Honor. Thank  
2 you.

3 THE COURT: All right. Thank you.

4 Any other counsel or party?

5 (No audible response)

6 THE COURT: Then I appreciate your time and the  
7 arguments. Thank you very much. We're adjourned.

8 MR. AULET: Thank you, Your Honor.

9 (Proceedings adjourned at 11:29 a.m.)

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12 **C E R T I F I C A T I O N**

13 I, DIPTI PATEL, court approved transcriber, certify  
14 that the foregoing is a correct transcript from the official  
15 electronic sound recording of the proceedings in the above-  
16 entitled matter and to the best of my ability.

17

18 /s/ Dipti Patel

19 DIPTI PATEL, CET-997

20 J&J COURT TRANSCRIBERS, INC. DATE: November 8, 2023

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